

# **Merton Council**

## **Licensing Sub-Committee**

**4 March 2019**

### **Notice of Determination**

5      Notice of Determination - Favorite Chicken & Ribs, 37 London      1 - 6  
         Road, Tooting, SW17 9JR

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 8<sup>th</sup> March 2019

**Subject:** Favorite Chicken and Ribs, 37 London Road, Tooting, London, SW17 9JR

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

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**Useful documents:**

**Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

**Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

**Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

**Merton's Statement of Licensing policy**

<http://www.merton.gov.uk/licensing>

# Annex A

## Determination

The Licensing Sub-Committee considered an application by Mr Ases Ashath for a new Premises Licence at “Favorite Chicken and Ribs”, 37 London Road, Tooting, London, SW17 9JR.

Mr Ashath applied for the provision of Late Night Refreshment (indoors only) and premises opening hours of 11:00 to 02:00 Monday to Sunday. The application advised that food would be served over the counter indoors and as part of a takeaway service.

One representation was received objecting to the application from Councillor Linda Kirby. Councillor Kirby was not present at the meeting.

In reaching its decision, the Licensing Sub-Committee had to promote the Licensing Objectives, make a decision that was appropriate and proportionate, that complied with the Licensing Act 2003 and its regulations and the licensing objectives, had regard to the current Home Office Section 182 Guidance, as well as to LB Merton’s Statement of Licensing Policy, and complied with any parameters provided by relevant case law.

The application was granted as sought.

## Licensing Sub-Committee Hearing

The Licensing Sub-Committee looked carefully at the application, its supporting papers, the Representation contained in the agenda papers and the oral evidence submitted at the hearing by the Applicant.

Mr Roshan Ashath, speaking for his father, the Applicant, stated:

- 1) The Premises had been open for some years and had not had any issues, and had previously held a Premises Licence for opening hours terminating at 5am at the premises, which was no longer in use. The application sought to replace that authorisation.
- 2) The Applicant would not and did not serve any patrons who were drunk, or behaving in an anti-social manner and schoolchildren are only permitted entrance two at a time.
- 3) No alcohol is served at the premises.
- 4) There are 9 CCTV cameras at the premises, 2 outside and 7 inside and the Applicant had provided the Metropolitan Police with CCTV evidence previously and were willing to assist the Local Authority at any stage when required. There are also additional CCTV street cameras outside which covered the local vicinity including the premises.
- 5) There was signage located in the shop asking customers to leave quietly.
- 6) The Premises is located in a busy area near to several bus routes and Tooting Railway Station and a large number of the customers to the shop were travelling on these routes and were mainly workers including taxi drivers and workers from the emergency services.
- 7) The Applicant had asked customers what time they would be likely to visit the premises and had used these results to inform the application and the terminal hour applied for of 02.00 hours.
- 8) The Applicant believed that there were several premises in the area which opened later than the hours applied for, including two food premises opposite and two local Public Houses.
- 9) The premises was often very busy at 11pm when the store was required to close. The premises had been open previously until after midnight on weekends and on inspection it was mentioned that a Premises Licence was required to trade past 11pm. So once informed that a licence was required, trade after 11pm had ceased and this licence application had been submitted.

## Reasons

The Licensing Sub-Committee decided to grant the Premises Licence variation as sought. The Licensing Sub-Committee gave the following reasons for their decision:

- a) There was insufficient proper evidence contained within the representation from Councillor Kirby to enable the Licensing Sub-Committee to refuse the application.
- b) The Licensing Sub-Committee noted that no objections had been received from any of the responsible authorities, especially the Police.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations in relation to the representation. The Thwaites case requires proper evidence to evidence the concerns raised in the representation and upon which a decision could be made.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).**

#### **13. Appeals**

13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

#### **General**

13.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

13.3 An appeal has to be commenced by the appellant giving a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

13.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police, the Home Office (Immigration Enforcement), or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

13.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or

- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

## **Licensing policy statements and Section 182 guidance**

13.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

13.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## **Giving reasons for decisions**

13.10 It is important that a licensing authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

## **Implementing the determination of the magistrates' courts**

**13.12** As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

## **Provisional statements**

**13.13** To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

**13.1** This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.